

Appl. No. : 10/642,399  
Filed : August 15, 2003

### REMARKS

In response to the Office Action mailed July 26, 2005, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments.

#### Election/Restriction

Applicant acknowledges the election of Claims 13-18. In this Amendment, Applicant has canceled the withdrawn claims (i.e. Claims 1-12 and 19-45) without prejudice.

#### Allowed Subject Matter

Applicant notes with appreciation that the Examiner has indicated that Claim 14 would be allowable if rewritten into independent form including all the limitations of the base claim and any intervening claims. In this Amendment, Claim 14 has been rewritten into independent form and Applicant submits this claim is in condition for allowance. Applicant has added new Claims 53-59. These claims are also in condition for allowance because, *inter alia*, they depend upon allowable Claim 14.

#### Claim Rejections - 35 U.S.C. § 102

Claims 13 and 15 stand rejected stand rejected under 35 U.S.C. § 102(b) as anticipated by Navas (USPN 5,540,688). Claims 13 and 15-18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Ferree (USPN 6,802,844).

Applicant respectfully disagrees with the rejection of these claims. Nevertheless, to advance prosecution, Applicant has amended independent Claim 13 as outlined below. Applicant reserves the right to pursue Claim 13 in its original or similar form in a continuing application.

As amended, Claim 13 recites, in part, a prosthesis comprising a bone anchor having a head, a transverse portal extending through said head along an axis transverse to a central axis of the bone anchor, the transverse portal "being substantially closed with respect to the central axis of said bone anchor."

In contrast, Navas disclosed a stabilization device that includes an implant 2 with a head and a lateral notch 2f. See Figure 1 and Col. 3, lines 50-57. The u-shaped lateral notch 2f is adapted to receive the neck 1b, 1c of the damper 1. *Id.*

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Ferree also disclosed a stabilization device. Ferree's device included a single opening bodies 20 and multiple opening bodies 40. The bodies 20, 30 include u-shaped openings 23, 25, 43, 45. *See* Figures 3A and 3B and Col. 7, lines 49-67.

Thus, neither reference discloses a bone anchor having a head, a transverse portal extending through said head along an axis transverse to a central axis of the bone anchor, the transverse axis being substantially closed with respect to the central axis of said bone anchor. For at least this reason, Applicant submits that Claim 13 and Claims 15-19, which depend upon Claim 14, are in condition for allowance.

#### **New Claims**

Applicant has added new Claims 46-77. Applicant respectfully submits that these claims are in condition for allowance.

New Claims 46-52 depend upon allowable Claim 14 and, for at least this reason, these claims are in condition for allowance.

New Claims 53-59 are discussed above.

New independent Claim 60 recites, in part, a prosthesis comprising a first bone anchor and a first segment of a rod which extends "through said transverse portal of said first bone anchor, said first segment defining a first surface, said first segment being configured such that it can be advanced entirely through said transverse portal of said second bone anchor." The cited art does not disclose a prosthesis with the above noted feature. For at least this reason, Claim 60 and dependent Claims 61-67 are in condition for allowance.

New Claim 68 recites, in part, a prosthesis in which "a guidewire lumen extend[s] through said first and second segments of the rod." The cited art does not disclose a prosthesis with the above noted feature. For at least this reason, Claim 68 and dependent Claims 69-72 are in condition for allowance.

New Claim 73 recites, in part, a prosthesis which comprises "a joint formed at least in part by said first surface and said second surface, said joint configured to allow an angular orientation of said first and second segments to be adjusted within a cone having a vertex located between said first and second bone anchors." The cited art does not disclose a prosthesis with the above noted feature. For at least this reason, Claim 73 and dependent Claims 74-77 are in condition for allowance.

Appl. No. : 10/642,399  
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**Claim 16**

Claim 16 has been amended to correct typographical errors.

**CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

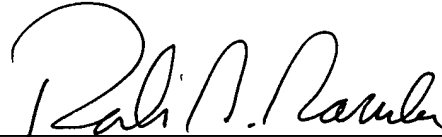
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By:   
Rabinder N. Narula  
Registration No. 53,371  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404

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101705